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IN THE

Supreme Court of the United States

October Term 1993

STATE OF FLORIDA,

Petitioner,

v.

EDWARD POUGH, ANTHONY Q. SINGLETON, AND ALBERT HICKSON

Respondents.

ON WRIT OF CERTIORARI TO THE FLORIDA FIRST DISTRICT COURT OF APPEAL

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QUESTION PRESENTED

I

WHETHER *FLORIDA v. BOSTICK* IS ABROGATED BY THE STATE COURT'S REQUIREMENT THAT A LAW ENFORCEMENT OFFICER HAVE REASONABLE SUSPICION OF CRIMINAL ACTIVITY IN ORDER TO ASK AN INDIVIDUAL FOR CONSENT TO SEARCH A VEHICLE AFTER THE COMPLETION OF A TRAFFIC STOP.

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CASE NO. _____

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ON WRIT OF CERTIORARI
TO THE FLORIDA
FIRST DISTRICT COURT OF APPEAL

Petitioner respectfully requests that a writ of certiorari issue to review the judgment and per curiam affirmance opinion affirming the granting of the Respondent's motion to suppress.

OPINIONS BELOW

The Florida First District Court of Appeal's per curiam affirmance opinion is Case No. 92-3084 (Fla. 1st DCA Nov. 23, 1993), and is reproduced in the Appendix of this pleading. [A-1].[1]

The trial court's written order granting the Motion to Suppress in case number 91-11056 CF from the Fourth Judicial Circuit Court, Duval County, Florida is reproduced in the Appendix of this pleading. [A-2]. References to the pretrial motion to suppress hearing will be by the symbol "T" followed by the appropriate page number.[2]

JURISDICTION

The Florida First District Court of Appeal rendered its per curiam affirmance, without a written opinion, on November 23, 1993. Review is not pending in the Florida Supreme Court because the court does not have jurisdiction over a per curiam affirmed decision which does not expressly and directly conflict with the decision of another district court of appeal. This Court has jurisdiction to review a state court's decision on a writ of certiorari under 28 U.S.C. § 1257(a).

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1 The symbol "A" followed by the appropriate number represents a citation to the materials contained in the Appendix to this pleading.

2 The text of the motion to suppress hearing is not included in this writ of certiorari. However, the Petitioner will provide this Court with the transcript, if the Court considers it appropriate.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner contends that the following amendments to the United States Constitution are involved:

The Fourth Amendment of the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrant shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fourth Amendment is applicable to the states through the Fourteenth Amendment of the United States Constitution which provides in pertinent part:

> Section 1. No State shall...deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article I, § 12 of the Florida Constitution provides in pertinent part:

> Searches and seizures. — This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution.

STATEMENT OF THE CASE

The State of Florida filed an information charging Edward Pough, and his codefendants Anthony Singleton and Albert Hickson, with conspiracy to traffic cocaine[3] and the transportation of currency in furtherance of an unlawful activity.[4] Before trial, Pough filed a motion to suppress evidence obtained from a warrantless search of his vehicle. (R 104-10). The motion to suppress alleged that the police conducted the search following an unlawful detention. (R 109). The trial court conducted a pretrial hearing on the motion, and developed the following facts. (T 5-118).

On September 6, 1991, Officer A. C. Lewis of the Jacksonville Sheriff's Office was assigned to the enforcement of traffic laws. (T 13-14). Further, Officer Lewis testified that he was accompanied by his dog, which is a member of a K-9 unit. (T 13). Officer Lewis also testified that his dog is specifically trained in detecting narcotics. (T 34). At approximately 9:00 a.m. on September 6, 1991, Officer Lewis noticed that a 1984 Oldsmobile appeared to be speeding in the southbound lane on Interstate 95. (T 15, 67). The radar in his patrol car indicated that the vehicle was traveling 63 miles per hour in a 55 miles per hour speed zone. (T 14). Officer Lewis drove his patrol car out of the median, and gave chase. (T 15). As he approached the speeding vehicle, Officer Lewis saw the driver commit another traffic violation by changing lanes without a signal. (T 15). Officer Lewis turned on his blue light and stopped the speeding vehicle. (T 15-16).

After the vehicle stopped, Officer Lewis approached and asked the driver to exit. (T 16). The driver exited the vehicle

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3 § 893.135(4), Fla. Stat. (1991).

4 § 896.101(2)(a)1, Fla. Stat. (1991).

and produced his driver's license. (T 16). Inside the vehicle, Officer Lewis noticed two other passengers, one of whom was Pough. (T 17). Officer Lewis then asked the driver of the vehicle, Hickson, whether he knew the speed limit. (T 16). Hickson indicated that he did not know the speed limit was 55 miles per hour. (T 16). As Officer Lewis checked Hickson's driver's license, he asked Hickson his destination. (T 16). Hickson indicated that he was from Orangeburg, South Carolina and that he was driving to Daytona to see a sick cousin. (T 16). Because Hickson did not have the vehicle's registration, Officer Lewis asked the two passengers still seated inside the vehicle for the registration. (T 23). Officer Lewis obtained the registration from Pough, the vehicle's owner. (T 23). As he obtained the registration, the officer asked Pough and the other passenger, Singleton, their destination. (T 23). Pough responded that they were going to Belle Glade to visit an uncle. (T 23). Officer Lewis testified that the inconsistent answers made him suspicious. (T 60-61). The license and registration check showed no problems, and Officer Lewis issued Hickson a warning citation. (T 25, 72). Officer Lewis testified that he estimated that the initial stop and license check took approximately 20 minutes. (T 24).

After issuing the warning citation, Officer Lewis and Hickson shook hands, and Hickson turned to go back to his vehicle. (T 72-73). Officer Lewis then testified that he asked Hickson whether they had any drugs or guns in the vehicle. (T 25, 73). Hickson stopped and answered "no". (T 25, 73). Officer Lewis then asked Hickson for consent to search the vehicle, and Hickson consented to the search. (T 25, 73). Further, Officer Lewis asked both Pough and Singleton for their consent. (T 26). Both men consented to the search. (T 26). Moreover, Officer Lewis testified that he did not threaten, intimidate, or coerce Hickson, Pough, or Singleton into giving their consent. (T 26).

The subsequent search revealed a closed blue tote bag inside the engine compartment. (T 29). Officer Lewis then asked Hickson, Pough, and Singleton to wait inside the patrol car. (T 29). The officer then brought his dog around the vehicle for a check. (T 34). The dog grabbed the tote bag, tore it open and a large amount of currency fell from the bag. (T 35-36). Moreover, inside the patrol vehicle a transmitter monitored the conversation between Hickson, Pough, and Singleton. (T 32). Officer Lewis testified that he distinctly heard Pough claim the $23,000 found in the bag, and further conversations between the threesome indicated that the money was for buying cocaine. (T 33). Following Officer Lewis' testimony, the trial court heard arguments on the motion to suppress. (T 100-18).

The following colloquy between the trial court, defense counsel, and the State briefly outlines the arguments:

> THE COURT: Well, the question is — I haven't read the cases. You have a traffic stop, the officer issues a citation and says — shakes your hand and says here is your ticket, I have checked everything, you are clean, you know, you don't have any warrants, here is your ticket. Now, is there not a necessity for another finding at that point in time?
>
> [STATE]: Well, there is —
>
> THE COURT: There seems to be from the case law.
>
> [STATE]: There is a necessity for a finding as to whether the consent is valid or not. If the consent is valid, there is a voluntary submission by the defendants to a detention for the purposes of carrying out that — the purpose of that consent, which is the search.
>
> [DEFENSE COUNSEL]: I think it turns on whether there is an additional valid purpose for

the remaining detention. What we are saying here is the officer gave his handshake and let him go and then the officer said wait a minute, come back, I want to ask you something. We are saying there must be some criminal activity known to the officer, and therefore, there was no valid purpose. The case law says absent any additional valid purpose.

[STATE]: Judge, it's irrelevant.

THE COURT: You can't just arbitrarily ask everybody can I search your car. He has to have something above a mere suspicion to ask that question in the first place.

[STATE]: Respectfully, Judge, I would disagree with that. My position on the law would be that any police officer on the streets and highways of the State of Florida can walk up to any citizen and ask them if they can search the person.

THE COURT: I disagree with that.

(T 103-06). The trial court later described the contention between the defense's and the State's positions as the "horns of my dilemma." (T 112).

The trial court entered a written order in which it found that the stop in the instant case "was not pretextual and that the officer was entitled to issue traffic citations for those offenses to which he testified." (A-2). The trial court, however, found that the traffic "stop should not have lasted any longer than the time it takes to write the citation." (A-2). Moreover, the trial court relied on a Florida Supreme Court case, *Cresswell v. State,* 564 So. 2d 480 (Fla. 1990), and concluded that the officer needed "reasonable suspicion based on articulable facts that criminal activity 'may be afoot' " to continue the stop. (A-2). Thus, the trial court granted Pough's motion to suppress the evidence.

The State appealed to the Florida First District Court of Appeal arguing that the trial court erred. The First District Court of Appeal per curiam affirmed the trial court's decision without a written opinion. This writ for certiorari follows the Florida appellate court's opinion.

REASONS FOR GRANTING THE WRIT

I.

WHETHER *FLORIDA v. BOSTICK,*[5] IS ABROGATED BY THE STATE COURT'S REQUIREMENT THAT A LAW ENFORCEMENT OFFICER HAVE REASONABLE SUSPICION OF CRIMINAL ACTIVITY IN ORDER TO ASK AN INDIVIDUAL FOR CONSENT TO SEARCH A VEHICLE AFTER THE COMPLETION OF A TRAFFIC STOP.

In the decision under review, *State v. Pough,* Case No. 92-3084 (Fla. 1st DCA Nov. 23, 1993), the Florida appellate court issued an unexplained per curiam affirmance approving the trial court's Order granting the defendants' Motion to Suppress. *State v. Pough,* No. 91-11056 CF (Cir. Ct. Duval Cty., Fla. Aug. 26, 1992) (order granting motion to suppress). Thus, the first hurdle for the Petitioner is to demonstrate why this Court should accept jurisdiction over a state court decision that does not disclose that the reason for judgment rests on federal law.

This Court has held that it will review a state court decision

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5 *Florida v. Bostick,* __ U.S. ___, 111 S. Ct. 2382, 115 L. Ed. 2d 389 (1991).

> when...a state court decision fairly appears to rest primarily on federal law, or to be interwoven with federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion, we will accept as the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so.

Michigan v. Long, 463 U.S. 1032, 1040-41, 103 S. Ct. 3469, 3476, 77 L. Ed. 2d 1201 (1983). In Florida, the courts are constitutionally required to interpret search and seizure issues in conformity with the Fourth Amendment as interpreted by this Court. Art. I, 12, Fla. Const.; *Perez v. State,* 620 So. 2d 1256 (Fla. 1993). Accordingly, the trial court's decision and the appellate court's affirmance can only rest on federal law.

This Court should look behind the Florida appellate court's unexplained per curiam decision affirming the trial court because it is clear that the trial court based its holding on a misconstruction of federal law when it required reasonable suspicion for consent searches. The transcript of the motion to suppress hearing shows that the trial court thought that a law enforcement officer must have reasonable suspicion of criminal activity before asking for consent to search the vehicle. (T 103-06). Moreover, the trial court's order ignores the facts that Officer Lewis issued the traffic citation, returned Hickson's driver's license and registration, shook Hickson's hand, and allowed Hickson to turn back towards the vehicle before asking for consent to search.[6] Even though the totality of the circumstances show

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6 Federal courts have recognized that once an officer returns a driver's license and registration, the encounter becomes consensual as long as a reasonable person under the circumstances would believe he or she was free to leave. *See United States v. Walker,* 933 F. 2d 812, 817 (10th Cir. 1991), *cert. denied,* __ U.S. __, 112 S. Ct. 1168, 117 L. Ed. 2d 414 (1992); *see also United States v. Turner,* 928 F. 2d 956, 958 (10th Cir. 1991).

that Officer Lewis was not detaining Hickson, Pough, or Singleton, the trial court held that the law enforcement officer illegally searched Pough's vehicle because the officer did not have reasonable suspicion of criminal activity to detain the men.[7] The trial court based its holding on the Florida Supreme Court's decision in *Cresswell v. State,* 564 So. 2d 480 (Fla. 1990), which construes federal Fourth Amendment case law.

In *Cresswell,* Florida's Supreme Court addressed the issue of whether a law enforcement officer, after the issuance of a traffic citation, may continue to detain the driver of the vehicle based on a drug courier profile, while a narcotics dog is summoned. *Id.* at 481. The *Cresswell* court relied on this Court's opinion in *Terry v. Ohio,* 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968), and held that the law enforcement officer may detain the driver "[s]o long as the profile describes circumstances which would reasonably indicate to a law enforcement officer the existence of reasonable suspicion." *Cresswell,* 564 So. 2d at 481. The *Cresswell* court further stated that "[t]o justify such a detention, an officer must have a reasonable suspicion based on articulable facts that criminal activity 'may be afoot.'" *Id.* (quoting *Terry*, 392 U.S. at 30, 88 S. Ct. at 1884). Thus, it is clear that the trial court misapplied *Cresswell* and federal law when it required reasonable suspicion to detain an individual under facts which show that Officer Lewis conducted the search pursuant to a consensual encounter.

The narrow question presented to this Court is whether a law enforcement officer may ask for consent to search the stopped vehicle without reasonable suspicion of criminal activity, after the completion of a traffic stop. This

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7 In fact, neither Pough, Hickson, nor Singleton testified at the pretrial hearing. Thus, there is no evidence in the record to suggest that the men were detained by Officer Lewis after the issuance of the traffic citation.

Court's case law makes it clear that not all encounters between law enforcement officers and individuals trigger Fourth Amendment scrutiny. *Terry,* 392 U.S. at 19, n.16; *see also Florida v. Bostick,* __ U.S. __, 111 S. Ct. 2382, 115 L. Ed. 2d 389 (1991). A consensual encounter between a law enforcement officer and an individual does not trigger Fourth Amendment scrutiny so long as a "reasonable person would feel free 'to disregard the police and go about his business.' " *Bostick,* 111 S. Ct. at 2386 (quoting *California v. Hodari D.,* 499 U.S. ___, ___, 111 S. Ct. 1547, 1551, 113 L. Ed. 2d 690 (1991)). In fact, this Court has stated that "even when officers have no basis for suspecting a particular individual, they may generally ask questions of that individual; ask to examine the individual's identification; and request consent to search his or her luggage—as long as the police do not convey a message that compliance with their request is required." *Bostick,* 111 S. Ct. at 2386 (citations omitted). Further, the facts in *Bostick* show that the police did not have reasonable suspicion that the defendant was engaged in criminal activity. Thus, the decision in the instant case that a law enforcement officer needs reasonable suspicion before asking for consent to search a vehicle after the completion of a traffic stop is directly contrary to *Bostick.*

Petitioner respectfully argues that this Court's case law makes it clear that after the completion of a traffic stop, a law enforcement officer may ask the occupants of the stopped vehicle for consent to search without triggering Fourth Amendment scrutiny. The focus in the instant case should be whether a reasonable person at the conclusion of the traffic stop would feel free to decline the officer's request, and in effect, terminate the encounter. In the instant case, Officer Lewis returned Hickson's driver's license and shook his hand. (T 72-73). Consequently, the traffic stop had ended, and Hickson was free to go about his business. Thus, the trial court erred in holding that Officer Lewis must have

reasonable suspicion of criminal activity to justify asking for consent to search.

This Court should accept jurisdiction over the instant case for two reasons: 1) because the issue of consent searches during lawful traffic stops occurs frequently in both the state[8]

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8 The following cases show that the issue of whether a law enforcement officer needs reasonable suspicion in order to ask for consent to search a vehicle during a traffic stop is a frequent and national concern. *See:*

Alabama: *State v. Washington*, 623 So. 2d 392 (Ala. Cr. App. 1993) (holding that officer did not have reasonable suspicion to detain defendant after completion of traffic stop; and officer's questions to defendant went beyond merely asking for consent to search);

Arizona: *State v. Paredes*, 810 P.2d 607 (Ariz. App. 1991) (holding that trial court abused its discretion in granting motion to suppress when facts showed that evidence was seized pursuant to consent search during a valid traffic stop);

California: *People v. Valencia*, 24 Cal. Rptr. 2d 883 (Cal. App. 4th Dist. 1993) (holding consent search valid following lawful traffic stop);

Florida: *State v. Ruth*, Case No. 92-03105 (Fla. 1st DCA Jan. 21, 1994) (per curiam affirmed, without opinion, trial court's order granting motion to suppress evidence obtained from a consent search which occurred after law enforcement officers stopped the vehicle for traffic violation. Defendant stopped for violating section 316.221, Florida Statutes (1991), which requires vehicles to have tail lamps that illuminate rear registration plate from fifty feet. The trial court concluded that the officer had an "ulterior motive" for the stop and did not have probable cause for the search or even an articulable suspicion of illegal activity; therefore consent to the search was not addressed.); and *Hills v. State*, 18 Fla. L. Weekly D1738 (Fla. 1st DCA July 22, 1993) (per curiam) (holding that officer's initial observation of defendant engaged in suspicious behavior did not rise to level of reasonable suspicion; therefore, traffic violations of failing to signal lane changes and sudden lane changes which caused a trailing vehicle to brake abruptly were not the focal point of stop. Thus, the issue of defendant's consent to search the vehicle not considered by the court);

Georgia: *Bowne v. State*, 436 S.E. 2d 76 (Ga. App. 1993) (reverse denial of motion to suppress because search following traffic stop without consent);

New Jersey: *State v. Abreau*, 608 A.2d 986, 989 (N.J. Super 1992) (holding "there is no constitutional requirement of reasonable suspicion as a prerequisite for seeking consent to search");

and federal courts;[9] and 2) because the decision below abrogates the well established federal rule of law that a consent

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New Mexico: *State v. Bolton*, 801 P.2d 98 (N.M. App.), *cert. denied*, 801 P.2d 86 (N.M. 1990) (holding that even after reasonable suspicion has been dissipated a police officer may detain a motorist momentarily to request permission for a search);

New York: *People v. Woods*, 592 N.Y.S. 2d 748 (A.D. 2d Dep. 1993) (reverse denial of motion to suppress evidence obtained from consent search following traffic stop because officer did not have reasonable suspicion that occupants of vehicle involved in criminal activity — even though vehicle matched description of vehicle seen at hotel larceny);

North Carolina: *State v. Morocco*, 393 S.E. 2d 545 (N.C. App. 1990) (holding police officer's detention of motorist longer than necessary to issue traffic citation while officer prepared vehicle consent search form did not violate motorist's Fourth Amendment rights);

Nebraska: *State v. Prachin*, 455 N.W. 2d 554 (Neb. 1990) (holding motion to suppress properly denied when evidence seized was pursuant to voluntary consent after a lawful traffic stop);

Ohio: *State v. Foster*, 621 N.E.2d 843 (Ohio App. 2 Dist. 1993) (holding motion to suppress properly granted when consent for search obtained following lawful traffic stop because the police officer's continued detention not based on reasonable suspicion);

Pennsylvania: *Commonwealth v. Parker*, 619 A.2d 735 (Pa. Super. 1993) (reversed denial of motion to suppress evidence obtained from a consent search because the continued detention following a lawful traffic stop was not supported by reasonable suspicion of criminal activity as required by state constitution);

Utah: *State v. Hewitt*, 841 P.2d 1222 (Utah App. 1992) (holding that consent to search vehicle involuntary after the completion of a traffic stop because officer lacked reasonable suspicion to detain defendant beyond initial purposes of stop); and

Washington: *State v. Tijerina*, 811 P.2d 241 (Wash. App.), *review denied*, 822 P.2d 289 (1991) (holding that evidence seized pursuant to a consent search should be suppressed because the officer did not have reasonable suspicion to detain the defendant after a lawful traffic stop).

9 As in the state courts, the issue of consent to search during a traffic stop is a frequent issue in the federal courts. *See: United States v. Maldonado-Espinosa*, 968 F.2d 101, 103-04 (1st Cir. 1992), *cert. denied*, ___ U.S. ___, 61 U.S.L.W. 3481 (1993) (consent valid after illegal x-ray

search does not trigger Fourth Amendment scrutiny. *Schneckloth v. Bustamonte,* 412 U.S. 218, 93 S. Ct 2041, 36

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search because illegal search played no role in defendant's decision to consent).

United States v. Wilson, 953 F.2d 116, 121 (4th Cir. 1991) (4th Amendment permits officers to randomly approach individuals to ask questions and request consent to search their luggage; officer's persistent questioning after defendant conveyed unwillingness to continue conversation, proscribed by 4th Amendment).

United States v. Kelley, 981 F.2d 1464, 1470 (5th Cir. 1993) (valid voluntary consent to search cured any 4th Amendment violation that may have occurred — questioning after lawful stop).

United States v. Ushery, 968 F.2d 575, 578 (6th Cir. 1992) (no objective justification required to initiate a consensual encounter; however, consensual encounter became a detention when officer asked defendant to remain during the search of defendant's bag) *and United States v. Flowers,* 909 F.2d 145, 147 (6th Cir. 1990).

United States v. Withers, 972 F.2d 837, 841 (7th Cir. 1992) (regarding consensual encounters, "the degree of suspicion required is zero"); *see also, United States v. Williams,* 945 F.2d 192, 195 (7th Cir. 1991); *United States v. Serna-Barreto,* 842 F.2d 965, 966 (7th Cir. 1988).

United States v. Barahona, 990 F.2d 412, 416-17 (8th Cir. 1993) (given lawful stop, resulting detention was 'reasonably related in scope to the circumstances which justified the stop in the first place'; answers to questions justified officer's reasonable suspicion to detain defendant until suspicions were satisfied; voluntary consent for search found); *and United States v. Todd,* 963 F.2d 207, 210 (8th Cir. 1992) (4th Amendment not implicated when officer asks questions, if officer does not suggest person must comply; consensual encounter between officer and airport passenger did not escalate into investigative detention implicating 4th Amendment when officer asked to search suitcases; thus, officer needed no reasonable suspicion at the time); *see also United States v. Harvey,* 946 F.2d 1375, 1377-78 (8th Cir. 1991).

United States v. Manuel, 992 F.2d 272, 274 (10th Cir. 1993) (officers could approach defendant without effecting 4th Amendment seizure; consent was voluntary even after officer stated his suspicion; officer had reasonable suspicion to detain defendant after questioning).

United States v. McKneely, 6 F.3d 1447, 1451 (10th Cir. 1993) (4th Amendment ban on unreasonable seizures does not prohibit officers from asking motorists questions if the encounter is consensual); *see also, United States*

L. Ed. 2d 854 (1973); *Davis v. United States*, 328 U.S. 582, 66 S. Ct. 1256, 90 L. Ed. 1453 (1946). If this Court does not examine the per curiam decision in the instant case, the state appellate court will evade review of a misconstruction of federal law that has a severe consequence.[10] The consequence of the decision below is the abrogation of law enforcement's tool of consent searches.

This tool is especially important to law enforcement officers because Florida is a known source state for drugs, and drugs are frequently transported to other states through the interstate system. *See Florida v. Royer*, 460 U.S. 491, 103 S.

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v. Walker, 933 F.2d 812, 817 (10th Cir. 1991), *cert. denied*, ___ U.S. ___, 112 S.Ct. 1168, 117 L.Ed.2d 414 (1992) (once officer returns driver's license and registration, questioning about drugs and weapons or a request for voluntary consent to searchmay be 'an ordinary consensual encounter between a private citizen and a law enforcement official, so long as a reasonable person under the circumstances would believe he was free to leave or disregard the officer's request for information'); *see also United States v. Turner*, 928 F.2d 956, 958 (10th Cir. 1991) (quoting *United States v. Werking*, 915 F.2d 1404, 1408 (10th Cir. 1990), *cert. denied*, ___ U.S. ___, 112 S.Ct. 230, 116 L.Ed.2d 187 (1991) (return of driver's license signaled termination of detention pursuant to traffic stop) *and United States v. Deases*, 918 F.2d 118, 122 (10th Cir. 1990), *cert. denied*, ___ U.S. ___, 111 S.Ct. 2859, 115 L.Ed.2d 1026 (1991).

United States v. Soto, 988 F.2d 1548, 1557 (10th Cir. 1993) (consensual search predicated on consent being given as license was being returned rejected; unless officer has returned driver's documentation the encounter is not consensual; consent to search voluntary and search upheld).

United States v. Guzman, 864 F.2d 1512 (10th Cir. 1988) (once check showed valid driver's license and registration, questioning about other matters illegal absent reasonable suspicion).

United States v. Torres, 804 F.Supp. 1432, 1434-7 (D. Utah 1992) (4th Amendment does not prohibit officer from asking questions to a motorist if the encounter is consensual; consensual search upheld).

10 Under Florida's constitution, district courts of appeals unexplained decisions are not reviewable in the state's Supreme Court. *Jenkins v. State*, 385 So. 2d 1356 (Fla. 1980).

Ct. 1319, 75 L. Ed. 2d 229 (1983); *Illinois v. Gates,* 462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983) (affidavit considered by court that Florida known source state for drugs and defendant transported drugs by interstate); *see also United States v. Marin,* 761 F.2d 426 (7th Cir. 1985) (Florida known source state for drugs). Consequently, the trial court's requirement in the instant case that a law enforcement officer have reasonable suspicion to ask for consent to search a vehicle has eradicated a powerful tool of law enforcement in drug interdiction. Unless corrected by this Court, the trial court's erroneous reasoning will be applicable to all police and citizen encounters, not just for violations of traffic stops, and drug laws. The trial court's decision will cause a substantial impediment to the enforcement of all laws. Therefore, this Court should accept jurisdiction over the instant case.

CONCLUSION

The Petitioner respectfully requests this Court to exercise its jurisdiction to correct the Florida First District Court of Appeal's per curiam affirmance of the trial court's order granting Respondent's motion to suppress evidence.

Respectfully submitted,

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COUNSEL FOR PETITIONER

CASE NO. _____

IN THE

Supreme Court of the United States

October Term 1993

STATE OF FLORIDA,

Petitioner,

v.

EDWARD POUGH, ANTHONY Q. SINGLETON,
AND ALBERT HICKSON

Respondents.

APPENDIX TO WRIT OF CERTIORARI TO THE FLORIDA FIRST DISTRICT COURT OF APPEAL

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State v. Pough, No. 91-11056 CF (Cir. Ct. Duval Cty., Fla. Aug. 26, 1992) (order granting motion to suppress) A-2

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

STATE OF FLORIDA,
Appellant,

v.

EDWARD POUGH,
ANTHONY Q. SINGLETON
and ALBERT HICKSON,
Appellees.

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

CASE NO. 92-3084

Opinion filed November 23, 1993.

An appeal from Circuit Court for Duval County.
John Southwood, Judge.

Robert A. Butterworth, Attorney General, and Richard Parker
Assistant Attorney General, Tallahassee, for Appellant.

Suzanne Worrall Green of Patterson & Green, Jacksonville,
for Appellees.

PER CURIAM.

AFFIRMED.

SMITH, ALLEN and MICKLE, JJ., CONCUR.

IN THE CIRCUIT COURT OF THE
FOURTH JUDICIAL CIRCUIT, IN AND
FOR DUVAL COUNTY, FLORIDA.

CASE NO.: 91-11056 CF
DIVISION: CR-C

STATE OF FLORIDA

VS

EDWARD POUGH (C)

ORDER

This cause came on to be heard on the Defendant's motion to suppress physical evidence, as well as statements, and the Court, having conducted an evidentiary hearing, finds that the initial stop by the officer was not a pretextual stop and the officer was entitled to issue traffic citations for those offenses to which he testified. From the evidence adduced at the hearing, the Court finds that the stop should not have lasted any longer than the time it takes to write the citation. The controlling law is *Cresswell v. State,* 564 S 2d 480, wherein the Court holds that an officer must have reasonable suspicion based on articulable facts that criminal activity "may be afoot". The Court further held that reasonable suspicion is something less than probable cause, but more than "inchoate and unparticularized suspicion or 'hunch' ".

In the instant case, the officer testified that one or more of the occupants of the vehicle appeared to be nervous, and further that two (2) of the occupants told him that their trip originated from the same place but each gave a different

destination. This Court is keenly aware that most people are nervous when stopped by a police officer.

In determining whether the officer had reasonable suspicion, the Court must take into account the totality of the circumstance and in doing so, this Court finds that the matters set forth did not rise to the level of reasonable suspicion, but rather were predicated upon a hunch.

Wherefore, it is

ORDERED:

1. The Defendant's Motion to Suppress is hereby granted.

DONE AND ORDERED at Jacksonville, Duval County, Florida, this 26th day of August, 1992.

/s/
JOHN D. SOUTHWOOD
CIRCUIT JUDGE

cc: State Attorney
Defense Counsel